



Montana Legislative History

Chapter: 267 Session L: 2007

Checklist of Bill History

Bill Number:	456 House	History and Final Status Sheet	x
		Introduced Bill	X
		Fiscal Note	N/A
		Third Reading Bill	X
		Final Version of Bill	X

House

Committee:
Judiciary

Hearing Date(s):
[February 1, 2007](#)

(there are no
summary minutes
for this date)

The date indicated for executive action, Feb. 14, 2007,
Did not include a discussion of this bill.

Senate

Committee:
Local Government

Hearing Date(s):
[March 20, 2007](#) (hearing and executive
action)

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by: sg

Date: March 7,

2024

Notes:

Bill Draft Number: LC1064

Bill Type - Number: HB 456

Short Title: Revise mobile home park laws by creating a mobile home lot rental act

Primary Sponsor: Walter McNutt (R) HD 37

Chapter Number: 267

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 48

Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	04/26/2007			
(H) Signed by Governor	04/26/2007			
(H) Transmitted to Governor	04/16/2007			
(S) Signed by President	04/16/2007			
(H) Signed by Speaker	04/14/2007			
(H) Returned from Enrolling	04/11/2007			
(C) Printed - New Version Available	04/11/2007			
(H) Sent to Enrolling	04/10/2007			
(H) 3rd Reading Passed as Amended by Senate	04/10/2007	95	1	
(H) Scheduled for 3rd Reading	04/10/2007			
(H) 2nd Reading Senate Amendments Concurred	04/09/2007	98	0	
(H) Scheduled for 2nd Reading	04/09/2007			
(S) Returned to House with Amendments	03/24/2007			
(S) 3rd Reading Concurred	03/24/2007	47	0	
(S) Scheduled for 3rd Reading	03/24/2007			
(S) 2nd Reading Concurred on Voice Vote	03/23/2007	49	0	
(S) Scheduled for 2nd Reading	03/23/2007			
(C) Printed - New Version Available	03/21/2007			
(S) Committee Report--Bill Concurred as Amended	03/21/2007			(S) Local Government
(S) Committee Executive Action--Bill Concurred as Amended	03/21/2007	10	0	(S) Local Government
(S) Hearing	03/20/2007			(S) Local Government
(S) Referred to Committee	03/08/2007			(S) Local Government
(S) First Reading	03/08/2007			
(H) Transmitted to Senate	02/21/2007			
(H) 3rd Reading Passed	02/21/2007	99	0	
(H) Scheduled for 3rd Reading	02/21/2007			
(H) 2nd Reading Passed	02/20/2007	98	1	
(H) Scheduled for 2nd Reading	02/20/2007			

(H) Committee Report--Bill Passed	02/14/2007		(H) Judiciary
(H) Committee Executive Action--Bill Passed	02/14/2007	17	0 (H) Judiciary
(H) Hearing	02/01/2007		(H) Judiciary
(H) Referred to Committee	01/29/2007		(H) Judiciary
(C) Introduced Bill Text Available Electronically	01/25/2007		
(H) First Reading	01/25/2007		
(H) Introduced	01/25/2007		
(C) Draft Delivered to Requester	01/23/2007		
(C) Draft Ready for Delivery	01/19/2007		
(C) Draft in Assembly/Executive Director Review	01/18/2007		
(C) Draft in Final Drafter Review	01/18/2007		
(C) Bill Draft Text Available Electronically	01/18/2007		
(C) Draft in Input/Proofing	01/18/2007		
(C) Draft to Drafter - Edit Review [SAB]	01/15/2007		
(C) Draft in Edit	01/15/2007		
(C) Draft in Legal Review	01/13/2007		
(C) Draft On Hold	12/27/2006		
(C) Draft to Requester for Review	12/12/2006		
(C) Draft On Hold	11/28/2006		
(C) Draft Request Received	11/27/2006		

Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	McNutt	Walter	
Drafter	Campbell	Bart	
Primary Sponsor	McNutt	Walter	

Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Landlord and Tenant	Simple	LT	
Property	Simple	PROP	

Additional Bill Information

Fiscal Note Probable: No
Preintroduction Required: N
Session Law Ch. Number: 267
DEADLINE
Category: General Bills

Transmittal Date: 02/28/2007

Return (with 2nd house amendments) Date: 04/05/2007

Section Effective Dates

Section(s) Effective Date Date Qualified

All Sections 01-OCT-07

Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. Effective date. [This act] is effective on passage and approval.

Section 7. Applicability. (1) [Section 1] applies to a death occurring after October 1, 2007.

(2) [Section 2] applies to a contract entered into after October 1, 2007.

Approved April 26, 2007

CHAPTER NO. 267

[HB 456]

AN ACT REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-24-103, MCA, is amended to read:

“70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) “Action” includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) “Case of emergency” means an extraordinary occurrence beyond the tenant’s control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) “Court” means the appropriate district court, justice’s court, or city court.

(4) “Dwelling unit” means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park ~~but does not rent and rents the mobile home, means the space rented and not the mobile home itself.~~

(5) “Good faith” means honesty in fact in the conduct of the transaction concerned.

(6) “Landlord” means:

(a) the owner, lessor, or sublessor of:

(i) the dwelling unit or the building of which it is a part; or

(ii) ~~a mobile home park; or~~

(b) a manager of the premises who fails to disclose the managerial position.

~~(7) "Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.~~

~~(8) "Mobile home park" means a trailer court as defined in 50-52-101.~~

(9)(7) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

~~(10)~~(8) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

~~(11)~~(9) "Person" includes an individual or organization.

~~(12)~~(10) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

~~(13)~~(11) "Rent" means all payments to be made to the landlord under the rental agreement.

~~(14)~~(12) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

~~(15)~~(13) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

~~(16)~~(14) "Single-family residence" means a structure maintained and used as a single dwelling unit. ~~Notwithstanding that a~~ A dwelling unit *that* shares one or more walls with another dwelling unit, ~~it is a single-family residence if it has direct access to a street or thoroughfare and shares neither~~ *does not share* heating facilities, hot water equipment, ~~nor~~ or any other essential facility or service with another dwelling unit.

~~(17)~~(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. Section 70-24-305, MCA, is amended to read:

"70-24-305. Transfer of premises by tenant. ~~(1)~~ A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

~~(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.~~

~~(3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot."~~

Section 3. Section 70-24-314, MCA, is amended to read:

"70-24-314. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, ~~but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association.~~

~~(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living."~~

Section 4. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

~~(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. ~~This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(7) Subsections (3) through (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

~~(8)(7)~~ The landlord is not bound by this section in the event that:

~~(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and~~

~~(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."~~

Section 5. Section 70-24-431, MCA, is amended to read:

"70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, ~~mobile home park tenant association,~~ or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against ~~him~~ *the tenant* for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact ~~must~~ *is required to* find the existence of the fact presumed unless and until evidence is introduced ~~which~~ *that* would support a finding of its nonexistence.

(4) ~~Notwithstanding subsections~~ Subsections (1), (2), and (3) of this section, do not prevent a landlord ~~may bring from bringing~~ an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with ~~his~~ the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition ~~which~~ that would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

Section 6. Section 70-24-441, MCA, is amended to read:

"70-24-441. Termination by landlord or tenant —~~applicability.~~ (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

~~(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home."~~

Section 7. Short title. [Sections 7 through 51] may be cited as "The Montana Residential Mobile Home Lot Rental Act".

Section 8. Purpose — liberal construction. (1) [Sections 7 through 51] must be liberally construed and applied to promote the underlying purposes and policies of [sections 7 through 51].

(2) The underlying purposes and policies of [sections 7 through 51] are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

Section 9. Definitions. Unless the context clearly requires otherwise, in [sections 7 through 51] the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means:

(a) the owner, lessor, or sublessor of:

(i) space or land, including a lot, that is rented to a tenant for a mobile home; or

(ii) a mobile home park; or

(b) a manager of the premises who fails to disclose the managerial position.

(6) "Lot" means the space or land rented and not a mobile home itself.

(7) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.

(8) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.

(9) "Mobile home park" means a trailer court as defined in 50-52-101.

(10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(11) "Person" includes an individual or organization.

(12) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13) "Rent" means all payments to be made to a landlord under a rental agreement.

(14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under [section 22] embodying the terms and conditions concerning the use and occupancy of the premises.

(15) "Tenant" means a person entitled under a rental agreement to occupy a lot to the exclusion of others.

Section 10. Applicability. (1) [Sections 7 through 51] apply to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. [Sections 7 through 51] apply to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of [sections 7 through 51], the following arrangements are not governed by [sections 7 through 51]:

(a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;

(b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

Section 11. Supplementary principles of law. Unless superseded by the provisions of [sections 7 through 51], the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of [sections 7 through 51].

Section 12. Notice. (1) A person has notice of a fact if:

- (a) the person has actual knowledge of the fact;
- (b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; or
- (c) in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence.

Section 13. Obligation of good faith. Every duty under [sections 7 through 51] and every act that must be performed as a condition precedent to the exercise of a right or remedy under [sections 7 through 51] imposes an obligation of good faith in its performance or enforcement.

Section 14. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by [sections 7 through 51] or other rule or law.

(2) Unless the rental agreement provides otherwise:

- (a) the tenant shall pay as rent the fair rental value for the use and occupancy of the lot as determined by the landlord;
- (b) rent is payable at the landlord's address;
- (c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;
- (d) rent is uniformly apportionable from day to day; and
- (e) the tenancy is from month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

Section 15. Prohibited provisions in rental agreements. (1) A rental agreement may not require a party to:

- (a) waive or forego rights or remedies under [sections 7 through 51];

(b) authorize any person to confess judgment on a claim arising out of the rental agreement; or

(c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of [section 19].

Section 16. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession of the premises and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Section 17. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.

(3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

(a) service of process and receiving notices and demands; and

(b) performing the obligations of the landlord under [sections 7 through 51] and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises.

Section 18. Landlord to deliver possession of premises. (1) At the commencement of the rental term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [section 19]. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

Section 19. Landlord to maintain premises — agreement that tenant perform duties. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) for the premises, maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the lot and arrange for their removal; and

(f) supply running water at all times, unless the lot is not required by law to be equipped for that purpose or the running water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants.

Section 20. Transfer of premises or termination of management — relief from liability. (1) Unless otherwise agreed, a landlord who conveys premises subject to a rental agreement, in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises subject to a rental agreement is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the termination of the manager's management duties.

Section 21. Transfer of premises by tenant. (1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

Section 22. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or may not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that involves a substantial modification of the rental agreement, it is not valid until after 30 days' written notice in the case of month-to-month tenancies.

Section 23. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by [section 42] and [section 43(1)(b)]; or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by [sections 7 through 51].

Section 24. Lot rules. (1) A landlord may adopt a rule concerning the rental occupancy of a lot and the use of common areas and facilities in accordance with [section 22]. A rule may not be unreasonable, and a rule that does not apply uniformly to all tenants of a similar class creates a rebuttable presumption, as defined in [section 48(3)], that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

Section 25. Resident associations — meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association.

(2) The landlord may not prohibit meetings by a resident association or tenants relating to mobile home living.

Section 26. Road maintenance obligations. In addition to the obligations imposed by [section 19], the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

Section 27. Tenant to maintain lot. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;

(c) dispose from the lot all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(e) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and

(f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

(a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;

(b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or

(c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.

Section 28. Notice of extended absence. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days not later than the first day of the extended absence.

Section 29. Administration of remedies — enforcement — agreement. (1) The remedies provided by [sections 7 through 51] must be administered so that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by [sections 7 through 51] is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of [sections 7 through 51] and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under [sections 7 through 51] or on a rental agreement, if disputed in good faith, may be settled by agreement.

Section 30. Prohibited provisions — damages. (1) A provision prohibited by [section 15] that is included in a rental agreement is unenforceable.

(2) If one party purposefully uses a rental agreement containing provisions known by that party to be prohibited, the other party may recover, in addition to actual damages, an amount up to 3 months' rent.

Section 31. Unconscionability — court discretion. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under [sections 7 through 51] or under a rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

Section 32. Landlord's failure to deliver premises — tenant's remedies. (1) If the landlord fails to deliver possession of the lot to the tenant as provided in [section 18], rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the lot against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount of not more than 3 months' rent or treble damages, whichever is greater.

Section 33. Landlord's failure to maintain premises — tenant's remedies. (1) Unless otherwise provided in [sections 7 through 51], if there is a noncompliance with [section 19] affecting health and safety, the following procedures apply:

(a) The tenant may deliver a written notice to the landlord specifying the nature of the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate the rental agreement for a condition caused by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent.

(b) (i) The tenant may make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(ii) If the landlord fails to comply with the rental agreement or [section 19] and the reasonable cost of compliance is less than 1 month's rent, the tenant may recover damages for the breach under subsection (2).

(2) Unless otherwise provided in [sections 7 through 51], the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [section 19].

(3) The remedy provided in subsection (2) is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to Title 70, chapter 25.

Section 34. Landlord's failure to provide essential services — tenant's remedies. (1) If contrary to the rental agreement or [section 19] the landlord purposefully or negligently fails to supply running water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the lot; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) A tenant proceeding under this section may not proceed under [section 33] for a landlord's failure to provide essential services.

(3) The rights of a tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions.

(4) A tenant does not have rights under this section if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

Section 35. Fire or casualty damage — rights and obligations of tenant. (1) (a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment of the mobile home is substantially impaired and [section 47] does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

Section 36. Unlawful or unreasonable entry by landlord — tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but has the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

Section 37. Unlawful ouster, exclusion, or diminution of services — tenant's remedies. (1) If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and any prepaid rent.

Section 38. Action for nonpayment of rent — tenant's counterclaim. (1) (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or [sections 7 through 51].

(b) (i) The court may order the tenant to pay into court all or part of the rent accrued and afterwards accruing, and the court shall determine the amount due to each party.

(ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the balance must be paid by the other party.

(iii) The court may at any time release money paid into the court to any party if the parties agree or if the court finds a party is entitled to the money.

(c) If there is no rent remaining due after application of this section, judgment must be entered for the tenant in an action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but may not be required to pay any rent into court.

Section 39. Noncompliance of tenant generally — landlord's right of termination — damages — injunction. (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of [section 27(3)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of [section 27(3)].

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of [section 27(4)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of [section 27(4)].

(3) Except as otherwise provided in [sections 7 through 51], the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 27]. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy.

Section 40. Waiver of landlord's right to termination. (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right.

Section 41. Refusal of access — landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by [section 23(5)], the landlord may either obtain injunctive relief or terminate the rental agreement.

Section 42. Tenant's failure to maintain lot — landlord's right to enter and repair. If there is noncompliance by the tenant with [section 27] affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time, the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

Section 43. Remedies for absence or abandonment. (1) (a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in [section 28], and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(b) During an absence of the tenant in excess of 7 days, the landlord may enter the lot when reasonably necessary.

(2) (a) If the tenant abandons the lot, the landlord shall make reasonable efforts to rent the lot at a fair rental. If the landlord rents the lot for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy.

(b) If the landlord fails to use reasonable efforts to rent the lot at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment.

(c) If the tenancy is from month to month or week to week, the term of the rental agreement for the purposes of this subsection (2) is a month or a week, as appropriate.

Section 44. Landlord's remedies after termination — action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) (a) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of

noncompliance under [section 27(4)], the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under [section 27(4)], the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

Section 45. Landlord's recovery of possession limited. Except in the case of abandonment or surrender or as permitted in [sections 7 through 51], a landlord may not recover or take possession of the lot by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services.

Section 46. Holdover remedies — consent to continued occupancy.

(1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months' rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy [section 14(2)(e)] applies.

Section 47. Disposition of abandoned personal property. (1) If a tenancy terminates in any manner except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at least 5 days has elapsed since the occurrence of the events upon which the landlord has based the belief of abandonment, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant and each known party having a lien or encumbrance of record, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned.

(b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

(7) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and, subject to any prior security interest of record, any delinquent rent or damages owing on the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county.

Section 48. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under [section 19]; or

(c) has organized or become a member of a tenant's union, mobile home park resident association, or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in [section 37] and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this subsection, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the lot.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under [section 32(2)].

Section 49. Disposition of abandoned mobile home. (1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days has elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the

removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. The sale proceeds are subject to any prior security interest of record. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

Section 50. Grounds for termination of rental agreement. (1) If there is a noncompliance by the tenant with the rental agreement or with a provision of [section 27], the landlord may deliver a written notice to the tenant pursuant to [section 12] specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was

given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of [section 27(1)] within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of [section 27(3)], for which the notice period is as provided in [section 39(1)];

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is

requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

Section 51. Attorney fees — costs. In an action on a rental agreement or arising under [sections 7 through 51], reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

Section 52. Repealer. Sections 70-24-313, 70-24-315, 70-24-432, and 70-24-436, MCA, are repealed.

Section 53. Codification instruction. [Sections 7 through 51] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 7 through 51].

Approved April 26, 2007

CHAPTER NO. 268

[HB 459]

AN ACT REQUIRING THE RESPECTFUL TRANSPORTATION AND DELIVERY OF A FETUS WHEN AN AUTOPSY IS REQUIRED; AND AMENDING SECTION 46-4-123, MCA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-4-123, MCA, is amended to read:

“46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. *In the case of a fetal death inquiry under 46-4-122, the department of justice shall adopt rules for respectful transportation and delivery of the fetus to the place where the autopsy will be performed. The rules must require that a fetus be transported in a crush-proof container and be labeled with the words “fragile—human remains inside”.* The report must be made in triplicate on a form provided by the division of forensic sciences of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, ~~he~~ *the coroner* shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.”

Approved April 26, 2007

HOUSE BILL NO. 456
INTRODUCED BY W. MCNUTT

A BILL FOR AN ACT ENTITLED: "AN ACT REMOVING REFERENCES TO MOBILE HOMES, MOBILE HOME OWNERS, AND MOBILE HOME PARKS FROM THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; CREATING THE MONTANA RESIDENTIAL MOBILE HOME LOT RENTAL ACT; PROVIDING REQUIREMENTS FOR MOBILE HOME LOT RENTAL AGREEMENTS; ESTABLISHING RIGHTS, OBLIGATIONS, AND REMEDIES FOR MOBILE HOME LOT TENANTS AND LANDLORDS; AMENDING SECTIONS 70-24-103, 70-24-305, 70-24-314, 70-24-422, 70-24-431, AND 70-24-441, MCA; AND REPEALING SECTIONS 70-24-313, 70-24-315, 70-24-432, AND 70-24-436, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-24-103, MCA, is amended to read:

"70-24-103. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including heat, electricity, gas, running water, hot water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. Dwelling unit, in the case of a person who rents space in a mobile home park ~~but does not rent and~~ rents the mobile home, means ~~the space rented and not the mobile home itself.~~

(5) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(6) "Landlord" means:

(a) the owner, lessor, or sublessor of:

———(i) the dwelling unit or the building of which it is a part; or

(ii) ~~a mobile home park; or~~

(b) a manager of the premises who fails to disclose the managerial position.

(7) ~~"Mobile home owner" means the owner of a manufactured mobile home dwelling unit entitled under a rental agreement to occupy a mobile home park space in a mobile home park.~~

———(8) ~~"Mobile home park" means a trailer court as defined in 50-52-101.~~

(9)(7) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, or partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(10)(8) "Owner" means one or more persons, jointly or severally, in whom is vested all or part of:

(a) the legal title to property; or

(b) the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(11)(9) "Person" includes an individual or organization.

(12)(10) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances in the structure, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(13)(11) "Rent" means all payments to be made to the landlord under the rental agreement.

(14)(12) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 70-24-311 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(15)(13) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of which are used in common by occupants in the structure.

(16)(14) "Single-family residence" means a structure maintained and used as a single dwelling unit. ~~Notwithstanding that a~~ A dwelling unit that shares one or more walls with another dwelling unit, ~~it is a single-family residence if it has direct access to a street or thoroughfare and shares neither~~ does not share heating facilities, hot water equipment, ~~nor or~~ or any other essential facility or service with another dwelling unit.

(17)(15) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others."

Section 2. Section 70-24-305, MCA, is amended to read:

"70-24-305. Transfer of premises by tenant. ~~(1)~~ A tenant who vacates a dwelling unit during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

~~(2) The sale or rental of a mobile home located upon a rental lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.~~

~~———— (3) A mobile home owner who owns the mobile home but rents the lot space has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot."~~

Section 3. Section 70-24-314, MCA, is amended to read:

"70-24-314. Resident associations -- meetings. ~~(1)~~ The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the mobile home park landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenant association.

~~(2) The mobile home park landlord may not prohibit meetings by a tenant association or tenants relating to mobile home living."~~

Section 4. Section 70-24-422, MCA, is amended to read:

"70-24-422. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction. (1) Except as provided in this chapter, if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 70-24-321, the landlord may deliver a written notice to the tenant pursuant to 70-24-108 specifying the acts and omissions constituting the noncompliance and that the rental agreement will terminate upon a date specified in the notice not less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice, subject to the following:

(a) If the noncompliance is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate.

(b) If the noncompliance involves an unauthorized pet, the notice period is 3 days.

(c) If the noncompliance involves unauthorized persons residing in the rental unit, the notice period is 3 days.

(d) If the noncompliance is not listed in subsection (1)(b) or (1)(c), the notice period is 14 days.

(e) If substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the noncompliance and the date of the termination of the rental agreement.

~~(f) This subsection (1) does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and the landlord's intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement. ~~This subsection does not apply to a rental agreement involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

(3) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of 70-24-321(2), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of 70-24-321(2).

(4) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested for or charged with an act that violates the provisions of 70-24-321(3), the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of 70-24-321(3).

(5) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 70-24-321. Except as provided in subsection (6), if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(6) Treble damages may not be recovered for the tenant's early termination of the tenancy.

~~(7) Subsections (3) through (6) apply to all rental agreements, including those involving a tenant who rents space for a mobile home but does not rent the mobile home.~~

~~(8)~~(7) The landlord is not bound by this section in the event that:

———~~(a) the rental agreement does not involve a tenant who rents space for a mobile home but does not rent the mobile home; and~~

———~~(b) the landlord elects to use the 30-day notice for termination of tenancy as provided in 70-24-441."~~

Section 5. Section 70-24-431, MCA, is amended to read:

"70-24-431. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 70-24-303; or

(c) has organized or become a member of a tenant's union, ~~mobile home park tenant association~~, or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 70-24-411 and has a defense in any retaliatory action against ~~him~~ the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact ~~must~~ is required to find the existence of the fact presumed unless and until evidence is introduced ~~which~~ that would support a finding of its nonexistence.

(4) ~~Notwithstanding subsections~~ Subsections (1), (2), and (3) ~~of this section,~~ do not prevent a landlord ~~may bring from bringing~~ an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with ~~his~~ the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition ~~which~~ that would effectively deprive the tenant of use of the dwelling unit.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under 70-24-405(2)."

Section 6. Section 70-24-441, MCA, is amended to read:

"70-24-441. Termination by landlord or tenant ~~—applicability.~~ (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy.

(3) The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

~~(4) The provisions of this section do not apply to a tenant who rents space for a mobile home in a mobile home park but does not rent the mobile home."~~

NEW SECTION. Section 7. Short title. [Sections 7 through 51] may be cited as "The Montana Residential Mobile Home Lot Rental Act".

NEW SECTION. Section 8. Purpose -- liberal construction. (1) [Sections 7 through 51] must be liberally construed and applied to promote the underlying purposes and policies of [sections 7 through 51].

(2) The underlying purposes and policies of [sections 7 through 51] are to:

(a) simplify and clarify the law governing the rental of land to owners of mobile homes and manufactured homes and the rights and obligations of landlords and tenants concerning lot rentals; and

(b) encourage landlords and tenants to maintain and improve the quality of housing.

NEW SECTION. Section 9. Definitions. Unless the context clearly requires otherwise, in [sections 7 through 51] the following definitions apply:

(1) "Action" includes recoupment, counterclaim, setoff suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Case of emergency" means an extraordinary occurrence beyond the tenant's control requiring immediate action to protect the premises or the tenant. A case of emergency may include the interruption of essential services, including electricity, gas, running water, and sewer and septic system service, or life-threatening events in which the tenant or landlord has reasonable apprehension of immediate danger to the tenant or others.

(3) "Court" means the appropriate district court, justice's court, or city court.

(4) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(5) "Landlord" means:

- (a) the owner, lessor, or sublessor of:
 - (i) space or land, including a lot, that is rented to a tenant for a mobile home; or
 - (ii) a mobile home park; or
- (b) a manager of the premises who fails to disclose the managerial position.
- (6) "Lot" means the space or land rented and not a mobile home itself.
- (7) "Mobile home" has the same meaning as provided in 15-1-101 and includes manufactured homes as defined in 15-1-101.
- (8) "Mobile home owner" means the owner of a mobile home entitled under a rental agreement to occupy a lot.
- (9) "Mobile home park" means a trailer court as defined in 50-52-101.
- (10) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, and any other legal or commercial entity.
- (11) "Person" includes an individual or organization.
- (12) "Premises" means a lot and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.
- (13) "Rent" means all payments to be made to a landlord under a rental agreement.
- (14) "Rental agreement" means all agreements, written or oral, and valid rules adopted under [section 22] embodying the terms and conditions concerning the use and occupancy of the premises.
- (15) "Tenant" means a person entitled under a rental agreement to occupy a lot to the exclusion of others.

NEW SECTION. **Section 10. Applicability.** (1) [Sections 7 through 51] apply to landlord-tenant relationships in which the landlord is renting a lot to the tenant for placement of the tenant's mobile home. [Sections 7 through 51] apply to land rental in a mobile home park as well as to the rental of individual parcels of land not in a mobile home park that are for the placement of a tenant's mobile home.

(2) Unless created to avoid the application of [sections 7 through 51], the following arrangements are not governed by [sections 7 through 51]:

- (a) occupancy under a contract of sale of a lot if the occupant is the purchaser or a person who succeeds to the purchaser's interest;
- (b) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(c) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises;

(d) occupancy outside a municipality under a rental agreement that includes hunting, fishing, or agricultural privileges along with the use of the lot; and

(e) any rental premises that are governed by the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24.

(3) The combined rental of the lot and mobile home, when the landlord owns both, are covered by the Montana Residential Landlord and Tenant Act of 1977.

NEW SECTION. Section 11. Supplementary principles of law. Unless superseded by the provisions of [sections 7 through 51], the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement the provisions of [sections 7 through 51].

NEW SECTION. Section 12. Notice. (1) A person has notice of a fact if:

(a) the person has actual knowledge of the fact;

(b) in the case of a landlord, the notice is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, the notice is personally delivered to the landlord or tenant or mailed with a certificate of mailing or by certified mail to the place held out by the landlord or tenant as the place for receipt of the communication or, in the absence of a designation, to the landlord's or tenant's last-known address. When notice is made by certificate of mailing or certified mail, the service of the notice must be considered to have been made 3 days after the date of mailing.

(2) Notice received by an organization is effective for a particular transaction from the time it is brought to the attention of the individual conducting that transaction on behalf of the organization and, in any event, from the time the notice would have been brought to the individual's attention if the organization had exercised reasonable diligence.

NEW SECTION. Section 13. Obligation of good faith. Every duty under [sections 7 through 51] and every act that must be performed as a condition precedent to the exercise of a right or remedy under [sections

7 through 51] imposes an obligation of good faith in its performance or enforcement.

NEW SECTION. Section 14. Rental agreements. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by [sections 7 through 51] or other rule or law.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the lot as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term that is a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is from month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or as provided by subsection (2).

NEW SECTION. Section 15. Prohibited provisions in rental agreements. (1) A rental agreement may not require a party to:

(a) waive or forego rights or remedies under [sections 7 through 51];

(b) authorize any person to confess judgment on a claim arising out of the rental agreement; or

(c) agree to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or related costs or attorney fees.

(2) A rental agreement or a related document may not permit the receipt of rent free of the obligation to comply with the provisions of [section 19].

NEW SECTION. Section 16. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to the landlord by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to the tenant by the landlord, acceptance of possession of the premises and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

NEW SECTION. Section 17. Duty to disclose name of person responsible. (1) A landlord or a person authorized to enter into a rental agreement on a landlord's behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

- (a) the person authorized to manage the premises; and
- (b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section must be kept current and in writing, and this section is enforceable against any successor landlord, owner, or manager.

(3) A person, other than the landlord, who fails to comply with subsection (1) becomes an agent of each person who is a landlord for the purpose of:

- (a) service of process and receiving notices and demands; and
- (b) performing the obligations of the landlord under [sections 7 through 51] and under the rental agreement and for expending or making available for the purpose of performing those obligations all rent collected from the premises.

NEW SECTION. Section 18. Landlord to deliver possession of premises. (1) At the commencement of the rental term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and [section 19]. A landlord may bring an action for possession against a person wrongfully in possession.

(2) If a landlord accepts rent or a deposit from a person intending to occupy the premises, the landlord is considered to have given consent for the person to take possession of the property and to have created a landlord-tenant relationship.

NEW SECTION. Section 19. Landlord to maintain premises -- agreement that tenant perform duties. (1) A landlord shall:

- (a) comply with the requirements of applicable building and housing codes materially affecting health and safety;
- (b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable

condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) for the premises, maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord;

(e) unless otherwise provided in a rental agreement, provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the lot and arrange for their removal; and

(f) supply running water at all times, unless the lot is not required by law to be equipped for that purpose or the running water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty must be determined by reference to subsection (1)(a).

(3) A landlord and tenant may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) but only if the agreement is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

(b) the work is not necessary to cure noncompliance with subsection (1)(a); and

(c) the agreement does not diminish the obligation of the landlord to other tenants.

NEW SECTION. Section 20. Transfer of premises or termination of management -- relief from liability. (1) Unless otherwise agreed, a landlord who conveys premises subject to a rental agreement, in a good faith sale to a bona fide purchaser, is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the conveyance. The landlord remains liable to the tenant for all security recoverable by the tenant pursuant to Title 70, chapter 25, and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises subject to a rental agreement is relieved of liability under the rental agreement and [sections 7 through 51] as to events occurring after written notice to the tenant of the termination of the manager's management duties.

NEW SECTION. Section 21. Transfer of premises by tenant. (1) A tenant who vacates a lot during the term of a tenancy may not allow the possession of the property to be transferred to a third person or sublet the property unless the landlord or the landlord's agent has consented in writing.

(2) The sale or rental of a mobile home located upon a lot does not entitle the purchaser or renter to retain rental of the lot unless the purchaser or renter enters into a rental agreement with the owner of the lot.

(3) A mobile home owner who owns the mobile home but rents the lot has the exclusive right to sell the mobile home without interference or conditions by the landlord. The new purchaser shall make suitable arrangements with the landlord in order to become a tenant on the mobile home lot. The purchase of the mobile home does not automatically entitle the purchaser to rent the mobile home lot.

NEW SECTION. Section 22. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant shall or may not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of the rule at the time that the tenant enters into the rental agreement or when the rule is adopted.

(2) A rule adopted by a landlord must be in writing and must be given to each tenant residing on the premises and to each new tenant upon arrival.

(3) If a rule is adopted after a tenant enters into a rental agreement that involves a substantial modification of the rental agreement, it is not valid until after 30 days' written notice in the case of month-to-month tenancies.

NEW SECTION. Section 23. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or the landlord's agent to enter the lot in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the

lot to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(2) A landlord may enter the lot without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of the intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by [section 42] and [section 43(1)(b)]; or

(c) when the tenant has abandoned or surrendered the premises.

(5) A tenant may not remove a lock or replace or add a lock not supplied by the landlord to the premises without the written permission of the landlord. If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises, the tenant shall provide the landlord with a key to ensure that the landlord will have the right of access as provided by [sections 7 through 51].

NEW SECTION. Section 24. Lot rules. (1) A landlord may adopt a rule concerning the rental occupancy of a lot and the use of common areas and facilities in accordance with [section 22]. A rule may not be unreasonable, and a rule that does not apply uniformly to all tenants of a similar class creates a rebuttable presumption, as defined in [section 48(3)], that the rule is unfair.

(2) Each common area facility must be open or available to residents at all reasonable hours, and the hours of a common recreational facility must be posted at the facility.

NEW SECTION. Section 25. Resident associations -- meetings. (1) The membership of a resident association may elect officers of the association at a meeting at which a majority of the members are present. All residents may attend meetings, but the landlord and the landlord's employees may not be members and may not attend meetings unless specifically invited by the tenants' resident association.

(2) The landlord may not prohibit meetings by a resident association or tenants relating to mobile home living.

NEW SECTION. Section 26. Road maintenance obligations. In addition to the obligations imposed by [section 19], the mobile home park landlord shall maintain common roads within the mobile home park in a safe condition, including arranging for snow plowing as is reasonable to keep the roads passable.

NEW SECTION. Section 27. Tenant to maintain lot. (1) A tenant shall:

- (a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;
- (b) keep that part of the premises that the tenant occupies and uses as reasonably clean and safe as the condition of the premises permits;
- (c) dispose from the lot all ashes, garbage, rubbish, and other waste in a clean and safe manner;
- (d) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;
- (e) conduct oneself and require other persons on the premises with the tenant's consent to conduct themselves in a manner that will not disturb the tenant's neighbors' peaceful enjoyment of the premises; and
- (f) use the parts of the premises in a reasonable manner considering the purposes for which they were designed and intended.

(2) This section does not preclude the right of the tenant to operate a limited business or cottage industry on the premises, subject to state and local laws, if the landlord has consented in writing. The landlord may not unreasonably withhold consent if the limited business or cottage industry is operated within reasonable rules of the landlord.

(3) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

(4) A tenant may not engage or knowingly allow any person to engage in any activity on the premises that creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured by any of the following:

- (a) criminal production or manufacture of dangerous drugs, as prohibited by 45-9-110;
- (b) operation of an unlawful clandestine laboratory, as prohibited by 45-9-132; or
- (c) gang-related activities, as prohibited by Title 45, chapter 8, part 4.

NEW SECTION. Section 28. Notice of extended absence. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days not later than the first day of the extended absence.

NEW SECTION. Section 29. Administration of remedies -- enforcement -- agreement. (1) The remedies provided by [sections 7 through 51] must be administered so that an aggrieved party may recover

appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by [sections 7 through 51] is enforceable by action unless the provision declaring it specifies a different and limited effect.

(3) Rules and regulations that are not a part of [sections 7 through 51] and that affect the relationship between the landlord and tenant must be uniformly and fairly applied and enforced.

(4) A claim or right arising under [sections 7 through 51] or on a rental agreement, if disputed in good faith, may be settled by agreement.

NEW SECTION. Section 30. Prohibited provisions -- damages. (1) A provision prohibited by [section 15] that is included in a rental agreement is unenforceable.

(2) If one party purposefully uses a rental agreement containing provisions known by that party to be prohibited, the other party may recover, in addition to actual damages, an amount up to 3 months' rent.

NEW SECTION. Section 31. Unconscionability -- court discretion. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision of the rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the agreement or may enforce the remainder of the agreement without the unconscionable provision result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under [sections 7 through 51] or under a rental agreement is unconscionable, the court in order to avoid an unconscionable result may refuse to enforce the settlement, may enforce the remainder of the settlement without the unconscionable provision, or may limit the application of any unconscionable provision.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties must be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making its determination.

NEW SECTION. Section 32. Landlord's failure to deliver premises -- tenant's remedies. (1) If the landlord fails to deliver possession of the lot to the tenant as provided in [section 18], rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and, if the tenant elects, maintain an action for possession of the lot against the landlord or a person wrongfully in possession and recover the actual damages sustained by the tenant.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount of not more than 3 months' rent or treble damages, whichever is greater.

NEW SECTION. Section 33. Landlord's failure to maintain premises -- tenant's remedies. (1) Unless otherwise provided in [sections 7 through 51], if there is a noncompliance with [section 19] affecting health and safety, the following procedures apply:

(a) The tenant may deliver a written notice to the landlord specifying the nature of the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. If the noncompliance results in a case of emergency and the landlord fails to remedy the situation within 3 working days after written notice by the tenant of the situation and the tenant's intention to terminate the rental agreement, the tenant may terminate the rental agreement. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) if the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach;

(ii) if substantially the same act or omission that constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement;

(iii) the tenant may not terminate the rental agreement for a condition caused by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent.

(b) (i) The tenant may make repairs that do not cost more than 1 month's rent and deduct the cost from the rent if the tenant has given the landlord notice and the landlord has not made the repairs within a reasonable time. If the repair is required in a case of emergency and the landlord has not made the repairs, the tenant may have repairs made only by a person qualified to make the repairs.

(ii) If the landlord fails to comply with the rental agreement or [section 19] and the reasonable cost of compliance is less than 1 month's rent, the tenant may recover damages for the breach under subsection (2).

(2) Unless otherwise provided in [sections 7 through 51], the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or [section 19].

(3) The remedy provided in subsection (2) is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to Title 70, chapter 25.

NEW SECTION. Section 34. Landlord's failure to provide essential services -- tenant's remedies.

(1) If contrary to the rental agreement or [section 19] the landlord purposefully or negligently fails to supply running water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct the actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the lot; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) A tenant proceeding under this section may not proceed under [section 33] for a landlord's failure to provide essential services.

(3) The rights of a tenant under this section do not arise until the tenant has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions.

(4) A tenant does not have rights under this section if the conditions were caused by the act or omission of the tenant, a member of the tenant's family, or any other person on the premises with the tenant's consent.

NEW SECTION. Section 35. Fire or casualty damage -- rights and obligations of tenant. (1)(a) If the lot or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the lot is substantially impaired, the tenant may immediately vacate the premises and notify the landlord in writing within 14 days of vacating the premises that it is the tenant's intention to terminate the rental agreement.

(b) If the tenant complies with the provisions of subsection (1)(a), the rental agreement terminates as of the date the tenant vacates the premises.

(2) If the rental agreement is terminated pursuant to subsection (1), the landlord shall return any prepaid rent and all security recoverable pursuant to Title 70, chapter 25. Accounting or apportionment for rent in the event of termination must be made as of the date of the fire or casualty.

(3) If the tenant's mobile home is damaged or destroyed by fire or casualty to an extent that enjoyment

of the mobile home is substantially impaired and [section 47] does not apply, it is the obligation of the mobile home owner to remove the mobile home from the lot within 30 days of the damage or destruction.

(4) All terms and conditions of the rental agreement remain in effect until the mobile home is removed from the premises and all required cleanup is completed.

NEW SECTION. Section 36. Unlawful or unreasonable entry by landlord -- tenant's remedies. If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry that is otherwise lawful but has the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

NEW SECTION. Section 37. Unlawful ouster, exclusion, or diminution of services -- tenant's remedies. (1) If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount of not more than 3 months' periodic rent or treble damages, whichever is greater.

(2) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to Title 70, chapter 25, and any prepaid rent.

NEW SECTION. Section 38. Action for nonpayment of rent -- tenant's counterclaim. (1) (a) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount recoverable under the rental agreement or [sections 7 through 51].

(b) (i) The court may order the tenant to pay into court all or part of the rent accrued and afterwards accruing, and the court shall determine the amount due to each party.

(ii) A party to whom a net amount is owed must be paid first from the money paid into court, and the balance must be paid by the other party.

(iii) The court may at any time release money paid into the court to any party if the parties agree or if the court finds a party is entitled to the money.

(c) If there is no rent remaining due after application of this section, judgment must be entered for the tenant in an action for possession.

(2) In an action for rent when the tenant is not in possession, the tenant may counterclaim as provided in subsection (1) but may not be required to pay any rent into court.

NEW SECTION. Section 39. Noncompliance of tenant generally -- landlord's right of termination -- damages -- injunction. (1) If the tenant destroys, defaces, damages, impairs, or removes any part of the premises in violation of [section 27(3)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the noncompliance under the provisions of [section 27(3)].

(2) If the tenant creates a reasonable potential that the premises may be damaged or destroyed or that neighboring tenants may be injured, as evidenced by the tenant being arrested or charged with an act that violates the provisions of [section 27(4)], the landlord may terminate the rental agreement upon giving 3 days' written notice specifying the violation and noncompliance under the provisions of [section 27(4)].

(3) Except as otherwise provided in [sections 7 through 51], the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or [section 27]. Except as provided in subsection (4) of this section, if the tenant's noncompliance is purposeful, the landlord may recover treble damages.

(4) Treble damages may not be recovered for the tenant's early termination of the tenancy.

NEW SECTION. Section 40. Waiver of landlord's right to termination. (1) Acceptance by the landlord of full payment of rent due is a waiver of a claimed breach of a rental agreement only when the claimed breach is the nonpayment of rent.

(2) Acceptance of full payment of rent due when a claimed breach is something other than the nonpayment of rent does not constitute a waiver of any right.

(3) The acceptance of partial payment of rent due does not constitute a waiver of any right.

NEW SECTION. Section 41. Refusal of access -- landlord's remedies. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case, the landlord may recover actual damages.

(2) If a tenant removes a lock or replaces or adds a lock not supplied by the landlord to the premises and fails to provide a key as required by [section 23(5)], the landlord may either obtain injunctive relief or terminate the rental agreement.

NEW SECTION. Section 42. Tenant's failure to maintain lot -- landlord's right to enter and repair.

If there is noncompliance by the tenant with [section 27] affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy the breach within that period of time, the landlord may enter the lot and cause the work to be done in a competent manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value of the work as rent on the next date rent is due or, if the rental agreement has terminated, for immediate payment.

NEW SECTION. Section 43. Remedies for absence or abandonment. (1)(a) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in [section 28], and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(b) During an absence of the tenant in excess of 7 days, the landlord may enter the lot when reasonably necessary.

(2) (a) If the tenant abandons the lot, the landlord shall make reasonable efforts to rent the lot at a fair rental. If the landlord rents the lot for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the new tenancy.

(b) If the landlord fails to use reasonable efforts to rent the lot at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment.

(c) If the tenancy is from month to month or week to week, the term of the rental agreement for the purposes of this subsection (2) is a month or a week, as appropriate.

NEW SECTION. Section 44. Landlord's remedies after termination -- action for possession. (1) If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

(2) (a) An action filed pursuant to subsection (1) in a court must be heard within 20 days after the tenant's appearance or the answer date stated in the summons, except that if the rental agreement is terminated because of noncompliance under [section 27(4)], the action must be heard within 5 business days after the tenant's appearance or the answer date stated in the summons.

(b) If the action is appealed to the district court, the hearing must be held within 20 days after the case is transmitted to the district court, except that if the rental agreement is terminated because of noncompliance under [section 27(4)], the hearing must be held within 5 business days after the case is transmitted to the district court.

(3) The landlord and tenant may stipulate to a continuance of the hearing beyond the time limit in subsection (2) without the necessity of an undertaking.

(4) In a landlord's action for possession filed pursuant to subsection (1), the court shall rule on the action within 5 days after the hearing.

NEW SECTION. Section 45. Landlord's recovery of possession limited. Except in the case of abandonment or surrender or as permitted in [sections 7 through 51], a landlord may not recover or take possession of the lot by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of running water, electricity, gas, or other essential services.

NEW SECTION. Section 46. Holdover remedies -- consent to continued occupancy. (1) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or other termination of the rental agreement, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount of not more than 3 months' rent or treble damages, whichever is greater.

(2) In an action for possession or unlawful holdover, the provisions of Title 25, chapter 23, apply, except that the time for filing an answer under Rule 4C(2)(b) is 10 days after service of summons and complaint, exclusive of the date of service.

(3) If the landlord consents to the tenant's continued occupancy [section 14(2)(e)] applies.

NEW SECTION. Section 47. Disposition of abandoned personal property. (1) If a tenancy terminates in any manner except by court order, if the landlord reasonably believes that the tenant has abandoned all personal property that the tenant has left on the premises, and if at least 5 days has elapsed since the occurrence of the events upon which the landlord has based the belief of abandonment, the landlord may remove the property from the premises.

(2) The landlord shall inventory and store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may charge a reasonable storage and labor

charge if the property is stored by the landlord, plus the cost of removal of the property to the place of storage. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

(3) After complying with subsections (1) and (2), the landlord shall:

(a) make a reasonable attempt to notify the tenant in writing that the property must be removed from the place of safekeeping;

(b) notify the local law enforcement office of the property held by the landlord;

(c) make a reasonable effort to determine if the property is secured or otherwise encumbered; and

(d) send a notice by certified mail to the last-known address of the tenant, stating that at a specified time, not less than 15 days after mailing the notice, the property will be disposed of if not removed.

(4) The landlord may dispose of the property after complying with subsection (3) by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if the landlord reasonably believes that the value of the property is so low that the cost of storage or sale exceeds the reasonable value of the property.

(5) (a) If the tenant, upon receipt of the notice provided in subsection (3), responds in writing to the landlord on or before the day specified in the notice that the tenant intends to remove the property and does not do so within 7 days after delivery of the tenant's response, the tenant's property is conclusively presumed to be abandoned.

(b) If the tenant removes the property, the landlord is entitled to storage costs for the period that the property remains in safekeeping, plus the cost of removal of the property to the place of storage. Reasonable storage costs are allowed to a landlord who stores the property, and actual storage costs are allowed to a landlord who stores the property in a commercial storage company. A landlord is entitled to payment of the storage costs allowed under this subsection before the tenant may remove the property.

(6) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act, in which case the landlord is liable for actual damages.

(7) (a) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, labor, and sale and any delinquent rent or damages owing on the premises. The landlord shall remit to the tenant the remaining proceeds, if any, together with an itemized accounting.

(b) If the tenant cannot after due diligence be found, the remaining proceeds must be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, must revert to the general fund of the county.

NEW SECTION. Section 48. Retaliatory conduct by landlord prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, by decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under [section 19]; or

(c) has organized or become a member of a tenant's union, mobile home park resident association, or similar organization.

(2) If the landlord acts in violation of subsection (1), the tenant is entitled to the remedies provided in [section 37] and has a defense in any retaliatory action against the tenant for possession.

(3) In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this subsection, "rebuttable presumption" means that the trier of fact is required to find the existence of the fact presumed unless evidence is introduced that would support a finding of its nonexistence.

(4) Subsections (1), (2), and (3) do not prevent a landlord from bringing an action for possession if:

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of the tenant's family, or any other persons on the premises with the tenant's consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition that would effectively deprive the tenant of use of the lot.

(5) The maintenance of an action under subsection (4) of this section does not release the landlord from liability under [section 32(2)].

NEW SECTION. Section 49. Disposition of abandoned mobile home. (1) If a tenancy terminates, if the landlord reasonably believes that the tenant has abandoned a mobile home occupying a mobile home lot, and if at least 5 days has elapsed since the occurrence of events upon which the landlord has formed the belief that the mobile home has been abandoned, the landlord may remove the mobile home from the premises or keep the mobile home stored on the premises.

(2) If the landlord does not keep the mobile home stored on the premises, the landlord shall store the

mobile home in a place of safekeeping and in either case shall exercise reasonable care for the mobile home. The landlord may charge the mobile home owner reasonable removal and storage charges.

(3) Regardless of where the landlord stores the mobile home, the landlord shall:

(a) notify the local law enforcement office of the storage;

(b) make a reasonable effort to determine if the mobile home is secured or otherwise encumbered; and

(c) send a notice by certified mail to the last-known address of the mobile home owner and to any person or entity the landlord determines has an interest referred to in subsection (3)(b), stating that at a specified time, not less than 15 days after mailing the notice, the mobile home will be disposed of if the mobile home owner does not respond and remove the mobile home.

(4) If the mobile home owner, within 15 days after receipt of the notice provided for in subsection (3)(c), responds in writing to the landlord that the owner intends to remove the mobile home from where it is stored and does not do so within 20 days after delivery of the owner's response, the mobile home may be conclusively presumed to be abandoned. A landlord is entitled to payment of the removal and storage costs allowed under subsection (2) before the owner may remove the mobile home.

(5) The landlord may dispose of the mobile home after complying with subsection (3) by:

(a) selling the mobile home at a public or private sale; or

(b) destroying or otherwise disposing of the mobile home if the landlord reasonably believes that the value of the mobile home is so low that the cost of a sale would exceed the reasonable value of the mobile home. Disposal may include having the mobile home removed to an appropriate disposal site.

(6) A public or private sale authorized by this section must be conducted under the provisions of 30-9A-610 or the sheriff's sale provisions of Title 25, chapter 13, part 7.

(7) The landlord has a lien on the mobile home and the proceeds of a sale conducted pursuant to subsection (6) for the reasonable costs of removal, storage, notice, sale, or delinquent rent or damages owing on the premises. A writing or recording is not necessary to create the lien provided for in this section. In the case of a sheriff's sale, the sheriff shall conduct the sale upon receipt of an affidavit from the landlord stating facts sufficient to warrant a sale under this section. After satisfaction of the lien, the landlord shall remit to the mobile home owner the remaining proceeds, if any. If the owner cannot after due diligence be found, the remaining proceeds must be deposited in the general fund of the county in which the sale occurred and, if not claimed within 3 years, are forfeited to the county.

NEW SECTION. **Section 50. Grounds for termination of rental agreement.** (1) If there is a

noncompliance by the tenant with the rental agreement or with a provision of [section 27], the landlord may deliver a written notice to the tenant pursuant to [section 12] specifying the acts or omissions constituting the noncompliance and stating that the rental agreement will terminate upon the date specified in the notice that may not be less than the minimum number of days after receipt of the notice provided for in this section. The rental agreement terminates as provided in the notice for one or more of the following reasons and subject to the following conditions:

(a) nonpayment of rent, late charges, or common area maintenance fees as established in the rental agreement, for which the notice period is 7 days;

(b) a violation of a rule other than provided for in subsection (1)(a) that does not create an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 14 days;

(c) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager, for which the notice period is 24 hours;

(d) late payment of rent, late charges, or common area maintenance fees, as established in the rental agreement, three or more times within a 12-month period if written notice is given by the landlord after each failure to pay, as required by subsection (1)(a), for which the notice period for termination for the final late payment is 30 days;

(e) a violation of a rule that creates an immediate threat to the health and safety of any other tenant or the landlord or manager whether or not notice was given pursuant to subsection (1)(c) and the violation was remedied as provided in subsection (3), for which the notice period is 14 days;

(f) two or more violations within a 12-month period of the same rule for which notice has been given for each prior violation, as provided in subsection (1)(a), (1)(b), or (1)(c), for which the notice period for the final violation is 30 days;

(g) two or more violations of [section 27(1)] within a 12-month period, for which the notice period for the final violation is 14 days;

(h) any violation of [section 27(3)], for which the notice period is as provided in [section 39(1)];

(i) disorderly conduct that results in disruption of the rights of others to the peaceful enjoyment and use of the premises, for which the notice period is 30 days;

(j) any other noncompliance or violation not covered by subsections (1)(a) through (1)(i) that endangers other tenants or mobile home park personnel or the landlord or manager or causes substantial damage to the premises, for which the notice period is 14 days;

(k) conviction of the mobile home owner or a tenant of the mobile home owner of a violation of a federal or state law or local ordinance, when the violation is detrimental to the health, safety, or welfare of other tenants or the landlord or manager or the landlord's documentation of a violation of the provisions of Title 45, chapter 9, for which the notice period is 14 days;

(l) changes in the use of the land if the requirements of subsection (2) are met, for which the notice period is 180 days;

(m) any legitimate business reason not covered elsewhere in this subsection (1) if the landlord meets the following requirements:

(i) the termination does not violate a provision of this section or any other state statute; and

(ii) the landlord has given the mobile home owner or tenant of the mobile home owner a minimum of 90 days' written notice of the termination.

(2) If a landlord plans to change the use of all or part of the premises from mobile home lot rentals to some other use, each affected mobile home owner must receive notice from the landlord as follows:

(a) The landlord shall give the mobile home owner and a tenant of the mobile home owner at least 15 days' written notice that the landlord will be appearing before a unit of local government to request permits for a change of use of the premises.

(b) After all required permits requesting a change of use have been approved by the unit of local government, the landlord shall give the mobile home owner and a tenant of the mobile home owner 6 months' written notice of termination of tenancy. If the change of use does not require local government permits, the landlord shall give the written notice at least 6 months prior to the change of use. In the notice the landlord shall disclose and describe in detail the nature of the change of use.

(c) Prior to entering a rental agreement during the 6-month notice period referred to in subsection (2)(b), the landlord shall give each prospective mobile home owner, and any tenant of the mobile home owner whose identity and address have been provided to the landlord, written notice that the landlord is requesting a change in use before a unit of local government or that a change in use has been approved.

(3) Subject to the right to terminate in subsections (1)(d) through (1)(k), if the noncompliance described in subsections (1)(a) through (1)(c) is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the noncompliance before the date specified in the notice, the rental agreement does not terminate as a result of that noncompliance.

(4) For purposes of calculating the total number of notices given within a 12-month period under subsection (1)(d), only one notice for each violation per month may be included in the calculation.

NEW SECTION. **Section 51. Attorney fees -- costs.** In an action on a rental agreement or arising under [sections 7 through 51], reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary.

NEW SECTION. **Section 52. Repealer.** Sections 70-24-313, 70-24-315, 70-24-432, and 70-24-436, MCA, are repealed.

NEW SECTION. **Section 53. Codification instruction.** [Sections 7 through 51] are intended to be codified as an integral part of Title 70, and the provisions of Title 70 apply to [sections 7 through 51].

- END -

MINUTES

MONTANA SENATE 60th LEGISLATURE - REGULAR SESSION

COMMITTEE ON LOCAL GOVERNMENT

Call to Order: By **CHAIRMAN KIM GILLAN**, on March 20, 2007 at 3:15 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Kim Gillan, Chairman (D)
Sen. John Esp (R)
Sen. Kelly Gebhardt (R)
Sen. Bob Hawks (D)
Sen. Carol C. Juneau (D)
Sen. Rick Laible (R)
Sen. Lynda Moss (D)
Sen. Terry Murphy (R)
Sen. Jerry O'Neil (R)
Sen. Mitch Tropila (D)

Members Excused:

Sen. Carol Williams (D)

Members Absent: None.

Staff Present: Sue O'Connell, Legislative Branch
Marigail Schreiner, Committee Secretary

Audio Committees: These minutes are in outline form only.

They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

Committee Business Summary:

Hearing & Date Posted: HB 596, HB 524, HB 456, 3/8/2007
Executive Action: HB 596, HB 456, HB 795, HB 369,
HB 524, SB 201

00:00:03 The Committee was called to order by Sen. Juneau.

HEARING ON HB 596

Opening Statement by Sponsor:

00:00:48 **REP. DIANE SANDS (D), HD 95**, opened the hearing on **HB 596**, Increase taxpayer assessment repayment term.

Proponents' Testimony:

00:02:00 Brent Ramharter, Business Manager City of Missoula

[EXHIBIT\(los59a01\)](#)

00:04:17 Alec Hansen, League of Cities

Opponents' Testimony:

00:05:01 None

Informational Testimony:

00:05:06 None

Questions from Committee Members and Responses:

00:05:14 Sen. O'Neil to Alec Hansen

Closing by Sponsor:

00:06:11 Rep. Sands

HEARING ON HB 524

Opening Statement by Sponsor:

00:07:02 **REP. ROBIN HAMILTON (D), HD 92**, opened the hearing on **HB 524**, Revise city or town incorporation laws.

Proponents' Testimony:

00:08:50 Walt Hill, Seeley Lake area

[EXHIBIT\(los59a02\)](#)

00:10:51 Alec Hansen, League of Cities

Opponents' Testimony:

00:12:47 None

Informational Testimony:

00:12:58 None

Questions from Committee Members and Responses:

00:13:04 Sen. O'Neil to Rep. Hamilton

00:15:45 Rep. Hamilton

EXHIBIT(los59a03)

00:16:38 Sen. Laible to Alec Hansen

Closing by Sponsor:

00:17:18 Rep. Hamilton

HEARING ON HB 456

Opening Statement by Sponsor:

00:18:07 **REP. WALTER MCNUTT (R), HD 37**, opened the hearing on **HB 456**, Revise mobile home park laws by creating a mobile home lot rental act.

Proponents' Testimony:

00:20:09 Roger Halver, Montana Landlords' Association

00:22:32 Steve Turkiewicz, Montana Bankers' Association

EXHIBIT(los59a04)

00:24:40 Steve Yeakel, Montana Independent Bankers

00:25:01 Janet Harper, Montana Credit Unions

00:25:16 Sen. Williams arrived

Opponents' Testimony:

00:25:28 Ed McHugh, McHugh Mobile Home Park

Informational Testimony:

00:29:16 None

Questions from Committee Members and Responses:

00:29:20 Sen. Esp to Rep. McNutt

00:30:34 Sen. Esp to Ed McHugh

00:32:15 Sen. Hawks to Rep. McNutt

00:33:15 Sen. Esp to Rep. McNutt

00:33:53 Sen. Moss to Roger Halver

Closing by Sponsor:

00:36:16 Rep. McNutt

00:38:01 Sen. Juneau

Discussion on SB 345 Amendments

00:38:35 Sen. Hawks

EXHIBIT(los59a05)

00:39:56 Sen. Gillan

EXECUTIVE ACTION ON HB 596

00:40:24 **Motion:** SEN. MOSS moved that HB 596 BE CONCURRED IN.

Discussion:

00:40:50 Sen. Moss

00:41:08 Sen. Gebhardt to Sen. Hawks

00:42:08 **Vote:** Motion carried unanimously by voice vote. SEN. HAWKS will carry HB 596 on the Senate Floor.

00:42:49 **Motion:** SEN. ESP moved that HB 456 BE CONCURRED IN.

00:43:05 **Motion/Vote:** SEN. ESP moved that HB 456 BE AMENDED.

Discussion:

00:43:10 Sen. Esp

00:43:31 **Vote:** Motion carried unanimously by voice vote with SEN. WILLIAMS voting aye by proxy.

00:43:45 **Motion:** SEN. ESP moved that HB 456 BE CONCURRED IN AS AMENDED.

Discussion:

00:44:06 Sen. Hawks

00:44:32 **Vote:** Motion carried unanimously by voice vote with SEN. WILLIAMS voting aye by proxy. SEN. O'NEIL will carry HB 456 on the Senate Floor.

EXECUTIVE ACTION ON HB 795

00:45:08 **Motion/Vote:** SEN. GEBHARDT moved that HB 795 BE CONCURRED IN. Motion carried unanimously by voice vote with SEN. WILLIAMS voting aye by proxy. SEN. GEBHARDT will carry HB 795 on the Senate Floor.

00:46:35 Sen. Juneau

00:46:58 Sue O'Connell

EXECUTIVE ACTION ON HB 369

00:47:15 **Motion:** SEN. GEBHARDT moved that HB 369 BE CONCURRED IN.

[**EXHIBIT**](#)(1os59a06)

[**EXHIBIT**](#)(1os59a07)

00:47:20 Sen. Laible arrived

00:48:35 **Motion:** SEN. GEBHARDT moved that HB 369 BE AMENDED.

Discussion:

00:48:57 Sen. Hawks

00:49:11 Sen. Gebhardt

00:49:38 **Vote:** Motion carried unanimously by voice vote with
SEN. WILLIAMS voting aye by proxy.

00:49:56 **Motion:** SEN. GEBHARDT moved that HB 369 BE CONCURRED
IN AS AMENDED.

00:50:05 **Motion:** SEN. ESP moved that HB 369 BE AMENDED.

Discussion:

00:50:59 Sen. Gillan to Sen. Esp

00:51:30 Sen. Hawks

00:53:13 Sen. Esp

00:53:49 **Vote:** Motion failed 3-8 by roll call vote with SEN.
ESP, SEN. LAIBLE, and SEN. O'NEIL voting aye and SEN.
WILLIAMS voting no by proxy.

00:54:48 **Motion:** SEN. GEBHARDT moved that HB 369 BE CONCURRED
IN AS AMENDED.

Discussion:

00:55:14 Sen. Hawks

00:56:00 **Vote:** Motion carried 10-1 by voice vote with SEN. ESP
voting no and SEN. WILLIAMS voting aye by proxy. SEN.
HAWKS will carry SB 369 on the Senate Floor.

EXECUTIVE ACTION ON HB 524

00:57:33 **Motion:** SEN. GEBHARDT moved that HB 524 BE CONCURRED
IN.

00:57:43 **Motion:** SEN. GEBHARDT moved that HB 524 BE AMENDED.

Discussion:

00:58:01 Sen. Gebhardt

00:58:45 **Vote:** Motion carried unanimously by voice vote with
SEN. WILLIAMS voting aye by proxy.

00:59:10 **Motion:** SEN. GEBHARDT moved that HB 524 BE CONCURRED
IN AS AMENDED.

00:59:20 **Motion:** SEN. O'NEIL moved that HB 524 BE CONCEPTUALLY
AMENDED.

Discussion:

01:00:10 Sen. Gebhardt

01:00:42 Sen. Hawks

01:01:51 Sen. O'Neil

01:02:57 Sen. Gillan

01:03:25 Sen. Gillan to Harold Blattie, Montana Association of
Counties

01:04:16 Sen. Esp

01:04:48 Sen. Hawks to Tim Davis, Montana Smart Growth Coalition

01:05:40 Sen. Gebhardt

01:06:49 Sen. O'Neil

01:08:16 **Vote:** Motion failed 3-8 by voice vote with SEN.
GEBHARDT, SEN. MURPHY, and SEN. O'NEIL voting aye and
SEN. WILLIAMS voting no by proxy.

01:09:24 **Motion:** SEN. JUNEAU moved that HB 524 BE CONCURRED IN
AS AMENDED.

Discussion:

01:09:42 Sen. Esp to Harold Blattie

01:10:40 Sen. Gillan

01:11:37 Harold Blattie

01:12:28 **Vote:** Motion carried 10-1 by voice vote with SEN.
O'NEIL voting no and SEN. WILLIAMS voting aye by proxy.
SEN. WILLIAMS will carry HB 524 on the Senate Floor.

EXECUTIVE ACTION ON SB 201

01:12:45 Sen. Laible

Discussion:

01:13:41 Tim Davis, Montana Smart Growth Coalition

01:14:22 **Motion:** SEN. LAIBLE moved that SB 201 DO PASS AS AMENDED.

Discussion:

01:15:03 Sue O'Connell

EXHIBIT(los59a08)

01:15:13 **Motion/Vote:** SEN. LAIBLE moved that SB 201 BE AMENDED. Motion carried unanimously by voice vote with SEN. WILLIAMS voting aye by proxy.

01:16:04 **Motion:** SEN. LAIBLE moved that SB 201 DO PASS AS AMENDED.

Discussion:

01:16:20 Sen. Laible

01:17:20 Sen. Hawks

01:17:39 Sen. Gebhardt

01:17:54 Sen. Laible

01:18:25 **Vote:** Motion carried 9-2 by voice vote with SEN. ESP and SEN. O'NEIL voting no and SEN. WILLIAMS voting aye by proxy.

01:19:18 Sue O'Connell, LSD

01:19:29 Sen. Laible

ADJOURNMENT

Adjournment: 4:35 P.M.

SEN. KIM GILLAN, Chairman

MARIGAIL SCHREINER, Secretary

KG/ms

Additional Exhibits:

EXHIBIT ([los59aad.pdf](#))

Amendments to House Bill No. 456
3rd Reading Copy

Requested by Representative Walter McNutt

For the Senate Local Government Committee

Prepared by Andrew Geiger
March 20, 2007 (11:22am)

1. Page 23, line 2.

Following: "tenant"

Insert: "and each known party having a lien or encumbrance of record"

2. Page 23, line 20.

Following: "sale and"

Insert: ", subject to any prior security interest of record,"

3. Page 25, line 20.

Following: "premises."

Insert: "The sale proceeds are subject to any prior security interest of record."

- END -